

Remarks

Claims 2 and 46 have been amended to overcome claim informalities

Claims 1-3, 6, 8, 19, 26-34, and 42-46 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. It is the Examiner's position that because independent claims have means for maintaining tissue under stress by application of force that tissue is a claimed part of the claimed invention. Independent Claims 1, 26, and 43 describe systems for dermatological examination of the tissue of a patient tissue, and tissue is used in the claim not as part of any structure but to describe the application of the system to tissue. Applicant must be allowed to use terms to describe how the claimed invention functions to give meaning to the claim. Moreover, the Examiner's position is contradictory to priority and related patents that have already been granted in which the same language was found acceptable, see Claims 1 and 13 of parent U.S. Patent No. 6,424,852, and Claim 1 of related U.S. Divisional Patent No. 6,937,886. The fact that the U.S. Patent Office has allowed that same language in its parent and related patents makes evident that such language, means for maintaining an area of the tissue under stress, does not claim non-statutory subject matter.

Furthermore, other patents have been granted using similar language constructs using the term tissue or skin. For example: Claim 4 of Taniji et al., U.S. Patent No. 5,598,841 describing "a measurement probe having means for maintaining the diameter of a blood vessel of the in vivo tissue constant"; Claims 1 and 2 of Corcuff et al., U.S. Patent No. 5,719,700 in describing its "contact endpiece...to contact the skin"; Claim 1 of Greenwald et al., U.S. Patent No. 6,360,115, describing "means for clamping the tissue by application of force to said tissue"; Claim 1 of Greenwald et al., U.S. Patent No. 6,856,458, describing "a clamp for clamping said excised tissue to hold said tissue stationary and against said window"; Claim 1 of Zavislan, et al., U.S. Patent No. 6,745,067 describing "means for stabilizing said tissue to said optics"; and Claim 1 of Benaron et al., U.S. Patent No. 6,594,518, describing "probe means additionally maintaining said illumination and detection fibers in optical contact with the tissue region". Like in the above cited granted patents, Claims 1, 26, and 43 of the present Application do not claim the tissue as part of the claimed invention, but are used to describe the operation of a claimed element. To state otherwise, would not allow the claims to describe how an element operates with respect to tissue. Accordingly, withdrawal of the 35 U.S.C. 101 rejection is requested.

Claims 49 and 50 were rejected as being anticipated by U.S. Patent No. 5,146,923 (Dhawan). Claim 49 has been amended to remove the language "representing". Dhawan cannot

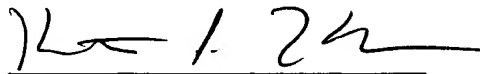
produce one or more images of optically formed sections within the stressed tissue, as described in Claim 49. Dhawan describes a nevoscope which uses a still or video camera (9) of Fig. 1 or camera 74 of Fig. 5 to record images of tissue (see column 7, lines 8-10). A still or video camera cannot provide an image of a section through tissue, but rather provides an image of the tissue surface, or an image of a volume of tissue transilluminated from the surface to a depth. The camera (9 and 74) of Dhawan captures an image of the tissue but cannot optically discriminate any section under the surface. Dhawan cannot optically form a sectional image. Accordingly, Dhawan relies on computer tomography to obtain sections (see top paragraph of column 3, and a computer-reconstructed cross-section of tissue at column 5, and especially, column 5, at lines 11-16 and 53-57). Computer-reconstructed sections are not optically formed, as called for in Claim 49. Clearly, if Dhawan was capable of providing images of optically formed sections, why would it describe use of computer reconstruction to generate an image of a cross-section? Therefore, Dhawan does not anticipate Claim 49 and its dependent Claim 50.

A terminal disclaimer is enclosed to overcome the obviousness-type double patenting rejection.

Also, Applicant has not yet received several PTO-1449 forms showing Examiner's consideration of items listed which were filed with Supplemental Information Disclosure Statements on April 19, 2005 and June 30, 2005. Copies of these forms are requested.

It is believed that this application is in condition for allowance, and a Notice of Allowance is respectfully solicited.

Respectfully submitted,



Kenneth J. LuKacher
Attorney for Applicant(s)
Registration No. 38,539

Dated: November 16, 2006

South Winton Court
3136 Winton Road South, Suite 301
Rochester, New York 14623
Telephone: (585) 424-2670
Facsimile: (585) 424-6196

Enclosures: Terminal Disclaimer with a check for \$65.00.